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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,901	07/05/2001	Jeffrey Norris	5793.3055-00	1420
22852	7590	12/12/2007	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			LASTRA, DANIEL	
			ART UNIT	PAPER NUMBER
			3622	
			MAIL DATE	DELIVERY MODE
			12/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 09/897,901	Applicant(s) NORRIS, JEFFREY	
	Examiner DANIEL LASTRA	Art Unit 3622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-6, 8-41, 43-76 and 78-113.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

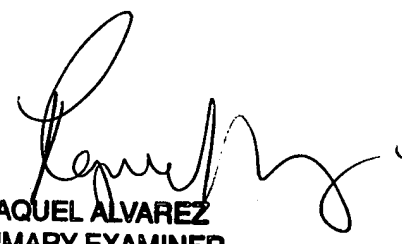
#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant argues that Gardenswartz merely discloses promotional incentives that may be based on a behavior of a consumer but according to the Applicant, this incentives are not attributes of a first group of consumers. The Examiner answers that Applicant's claims recites "wherein at least one of the attributes includes at least one of financial information or loyalty information". Gardenswartz teaches classifying consumers by assigning to the consumer a purchase behavior group classification (see Gardenswartz col 3, lines 45-55, col 12, lines 35-45), where said purchase behavior classification is based upon consumers responses to loyalty offers (see Gardenswartz col 17, lines 20-67) and where targeted advertisements (e.g. value contracts) is selected based on the purchase behavior group classification assigned to the consumer (see Gardenswartz col 17, lines 45-65). Furthermore, Applicant's specification teaches that "data analyzer determines attributes of, on one hand, those potential shoppers in the market universe who have previously exhibited a desired buying behavior or propensity to respond to incentives, and on the other hand, those who have not exhibited the desired buying behavior or propensity to respond to incentives". Therefore, according to Applicant's specification consumers' "attributes" are based upon consumers' purchase behavior and therefore, Gardenswartz teaches Applicant's "attribute" limitation and "determining" attributes of a first group of consumers, wherein at least one of the attributes (i.e. purchase behavior classification) includes "loyalty information", where said "loyalty information" includes at least one history of responses to loyalty offers. The Applicant argues that Gardenswartz does not teach the limitation "determining attributes of a second group of consumers in the market population of consumers who have not purchased the item". The Examiner answers that Gardenswartz teaches in col 12, lines 29-56 a system that determines if a consumer has or has not purchased an item in order to better target promotions to said consumer. Therefore, contrary to Applicant's argument, Gardenswartz teaches the "not purchased" limitation. The Applicant argues that Gardenswartz does not teach the limitation "determining differences between the first group of consumers and the second group of consumers to identify attributes of consumers exhibiting a particular buying behavior". The Examiner answers that Gardenswartz identifies attributes of consumers exhibiting a desired buying behavior by identifying consumers' brand preferences (see col 15, lines 1-40). Therefore, contrary to Applicant's argument, Gardenswartz teaches Applicant's limitation..



**RAQUEL ALVAREZ**  
**PRIMARY EXAMINER**